

PART X.

Companies Established Outside Mysore.

277. (1) Every company incorporated outside Mysore, which at the commencement of this Act has a place of business in Mysore, and every such company which after the commencement of this Act establishes such a place of business within Mysore, shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar—

Requirements
as to compa-
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blished out-
side Mysore.

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and managers (if any) of the company;
- (d) the names and addresses of some one or more persons, resident in Mysore authorized to accept on behalf of the company service of process and any notices required to be served on the company;
- (e) the full address of that office of the company in Mysore which is to be deemed the principal place of business in Mysore of the company,

and, in the event of any alteration being made in any such instrument or in any such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time, file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar—

- (i) in a case where by the law, for the time being in force, of the country in which the company is incorporated such company is required to file with the public authority an annual balance-

sheet,—three copies of that balance-sheet and if the balance-sheet does not contain all the information provided for in the form marked H in the Third Schedule, such supplementary statements in triplicate as shall furnish such information ; or

- (ii) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated, —such a statement in triplicate in the form of a balance-sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act ;

(4) Every company to which this section applies and which uses the word “ Limited ” as part of its name, shall,—

- (a) in every prospectus inviting subscriptions for its shares or debentures in Mysore, state the country in which the company is incorporated ; and
- (b) conspicuously exhibit on every place where it carries on business in Mysore, the name of the company and the country in which the company is incorporated in letters easily legible in English or Kannada characters, and
- (c) have the name of the company and of the country in which the company is incorporated mentioned in legible English or Kannada characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company.

(5) Every company to which this section applies shall if the liability of the members of the company is limited cause notice of that fact to be stated in legible characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter paper, notices, advertisements and other official publications of the company in Mysore, and to be affixed on every place where it carries on business.

(6) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred

rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(7) For the purposes of this section—

- (a) the expression “certified” means certified in the prescribed manner to be a true copy or a correct translation;
- (b) the expression “place of business” includes a share transfer or share registration office;
- (c) the expression “director” includes any person occupying the position of director, by whatever name called; and
- (d) the expression “prospectus” means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(8) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

277-A. (1) It shall not be lawful for any person—

(a) to issue, circulate or distribute in Mysore any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Mysore whether the company has or has not established, or when formed will or will not establish, a place of business in Mysore, unless—

Restriction on sale and offer for sale of shares.

(i) before the issue, circulation or distribution of the prospectus in Mysore a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated; and

(iv) the prospectus otherwise complies with this Part; or

(b) to issue to any person in Mysore a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture-holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Mysore are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 98-A to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five thousand rupees.

(6) In this section and in section 277-B, the expressions 'prospectus,' 'shares' and 'debentures' have the same meanings as when used in relation to a company incorporated under this Act.

Requirements
as to
prospectus.

277-B. (1) In order to comply with this Part a prospectus, in addition to complying with the provisions of sub-clauses (ii) and (iii) of clause (a) of sub-section (1) of section 277-A, must—

(a) contain particulars with respect to the following matters:—

(i) the objects of the company;

- (ii) the instrument constituting or defining the constitution of the company;
- (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iv) an address in Mysore where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language, a translation thereof in the English language certified in the prescribed manner, can be inspected;
- (v) the date on which and the country in which the company was incorporated;
- (vi) whether the company has established a place of business in Mysore and, if so, the address of its principal office in Mysore.

Provided that the provisions of sub-clauses (i), (ii) and (iii) of this clause shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business:

(b) subject to the provisions of this section, state the matters specified in sub-section (1-A) of section 93 and set out the reports specified in that section:

Provided that—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and

(ii) in section 93 of this Act, a reference to the articles of the company shall be deemed to be a reference to the constitution of the company.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to effect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus

shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in clause (n) of sub-section (1) of section 93, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Restriction on
canvassing
for sale of
shares.

277-C. (1) It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside Mysore for subscription or purchase to the public or any member of the public.

(2) In this sub-section the expression 'house' shall not include an office used for business purposes.

(3) Any person acting in contravention of this section shall be liable to a fine not exceeding rupees one hundred.

Registration
of charges.

277-D. The provisions of sections 109 to 117, both inclusive, and 120 to 125, both inclusive, shall extend to charges on properties in Mysore which are created and to charges on property in Mysore which is acquired after the commencement of this Act, by a company incorporated outside Mysore which has an established place of business in Mysore: Provided that references in the said sections to the registered office of the company shall be deemed to be references to the principal place of business in Mysore of the Company:

Provided further that, where a charge is created outside Mysore or the completion of the acquisition of property takes place outside Mysore, sub-clause (i) of the proviso to sub-section (1) of section 109 and the proviso to sub-section

(1) of section 109-A shall apply as if the property wherever situated were situated outside Mysore.

277-E. The provisions of sections 118 and 119 shall *mutatis mutandis* apply to the case of all companies incorporated outside Mysore but having an established place of business in Mysore and the provisions of section 130 shall apply to such companies to the extent of requiring them to keep at their principal place of business in Mysore the books of account required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in Mysore:

Notice of
appointment
of receiver.

Provided that references in the said section to be registered office of the company shall be deemed to be references to the principal place of business in Mysore of the company.

PART X-A.

BANKING COMPANIES.

277-F. A 'banking company' means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely:—

Definition of
banking
company.

(1) the borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travellers' cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(2) acting as agents for Government or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent of a company not being a banking company, including the power to act as attorneys and to give discharges and receipts;

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in, managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(5) carrying on and transacting every kind of guarantee and indemnity business;

(6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;

(7) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition or which in the opinion of the company is likely to facilitate the realization of any securities held by the company or to prevent or diminish any apprehended loss or liability;

(8) managing, selling and realizing all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(9) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advance or which may be connected with any such security;

(10) undertaking and executing trusts;

(11) undertaking the administration of estates as executor, trustee or otherwise;

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

277-G. (1) No company formed after the commencement of this Act, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word 'bank,' 'banker' or 'banking' shall be registered under this Act unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in section 277-F.

Limitation of activities of banking company.

(2) No banking company whether incorporated in or outside Mysore shall, after the expiry of two years from the commencement of this Act, carry on any form of business other than those specified in section 277-F, :

Provided that the Government may, by notification in the official Gazette, specify in addition to the businesses set forth in clauses (1) to (17) of section 277-F other forms of business which it may be lawful under this section for a banking company to engage in.

277-H. No banking company shall, after the expiry of two years from the commencement of this Act, employ

Banking company not to employ managing agent.

or be managed by a managing agent other than a banking company for the management of the company.

Restriction
on commence-
ment of
business by
banking
company.

277-I. Notwithstanding anything contained in section 103, no banking company incorporated under this Act shall commence business, unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid-up capital has been filed with the registrar.

Prohibition of
charge on
unpaid
capital.

277-J. No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

Reserve
fund.

277-K. (1) Every banking company shall, after the commencement of this Act, maintain a reserve fund.

(2) Every banking company shall, out of the declared profits of each year and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital.

(3) A banking company shall invest the amount standing to the credit of its reserve fund in Government securities or keep deposited in a special account to be opened by the company for the purpose in any bank approved by the Government:

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the commencement of the Mysore Companies Act, 1938, till after the expiry of two years from the commencement of the said Act.

Cash reserve.

277-L. (1) Every banking company shall maintain by way of cash reserve in cash a sum equivalent to at least one and a half per cent of the time liabilities and five per cent of the demand liabilities of such company and shall file with the registrar before the tenth day of every month three copies of a statement of the amount so held on the Friday of each week of the preceding month with particulars of the time and demand liabilities of each such day.

(2) For the purposes of sub-section (1) 'demand liabilities' means liabilities which must be met on demand, and 'time liabilities' means liabilities which are not demand liabilities.

(3) If default is made in complying with the requirements of section 277-G, section 277-H, section 277-J, section 277-K or section 277-M or with the requirements of this section as to the maintenance of a cash reserve, every director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues, and if default is made in complying with the requirements of this section as to the filing of the statement referred to in sub-section (1), to a fine not exceeding one hundred rupees for every day during which the default continues.

277-M. (1) A banking company shall not form any subsidiary company except a subsidiary company formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor, trustee or otherwise and such other purposes set forth in section 277-F as are incidental to the business of accepting deposits of money on current account or otherwise.

Restriction on
nature of
subsidiary
companies.

(2) Save as provided in sub-section (1), a banking company shall not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding fifty per cent of the issued share capital of that company:

Provided that nothing in this sub-section shall apply to shares held by a banking company before the commencement of this Act.

277-N. (1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period.

Power of
Court to stay
proceedings.

(2) No such application shall be maintainable unless accompanied by a report of the registrar:

Provided, however, the Court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report.

(3) The registrar shall, for the purposes of his report, be entitled at the cost of the company to investigate the financial condition of the company and for such purpose to have the books and documents of the company examined by an accountant holding a certificate issued under section 144.